



REQUEST FOR PROPOSALS

RFP # 16-330

Probation Services

Responses are due:

December 12, 2016 2:00 p.m.

and should be delivered to:

City of Brookhaven
Purchasing Office
4362 Peachtree Road
Brookhaven, GA 30319

in hard copy only; electronic or fax responses will not be accepted.
Responses received after the deadline or at any other locations will not be accepted.
Proposer's shall submit one (1) original signed document and one (1) thumb/Flash drive.

No pre-proposal conference will be held. No phone calls.

Deadline for questions is 5:00 p.m., December 1, 2016. Questions received after this date and time may not be answered.

**Questions must be directed in writing (email) to the
City of Brookhaven Purchasing at:
purchasing@brookhavenga.gov**

RESPONSE SIGNATURE AND CERTIFICATION

I certify that this Response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Response ("Offeror") for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the Response and certify that I am authorized to sign this Response for Offeror. I further certify that the provisions of O.C.G.A. § 45-10-20, et seq. have not been violated and will not be violated in any respect.

Authorized Signature for Offeror: _____

Date: _____

Print/Type Name: _____

Print/Type Offeror Name Here: _____

Email Address _____

CORPORATE CERTIFICATE

I, _____, certify that I am the Secretary of the company named as Offeror in the foregoing Response; that _____, who signed said Response in behalf of the Offeror, was then (title) _____ of said company; that said Response was duly signed for and in behalf of said company by authority of its Board of Directors, and is within the scope of its corporate powers; that said company is organized under the laws of the State of Georgia.

This _____ day of _____, 2016.

(Company- Legal Corporate Name)

(Signature)

(Seal)

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CITY OF BROOKHAVEN

Request for Proposals # 16-330

Probation Service

SECTION 1: BACKGROUND

A. Purpose

The City of Brookhaven (“City”) is seeking Responses from highly qualified firms to provide the City’s Municipal Court with Probation Management services. The objective of this Request for Proposal (RFP) is to solicit proposals from experienced and qualified Prospective Service Providers (Vendors) who are interested in entering into a contract to carry out the services defined herein.

B. General Information About the City

C. Project Background

The City of Brookhaven was incorporated December 17, 2012 and is the newest city in DeKalb County. The City’s population is approximately 50,000 with a geographic area of approximately 11.5 square miles. In 2014, The Atlanta Business Chronical recognized the City of Brookhaven as the fastest growing residential zip code in the Metro-Atlanta area.

Currently the City of Brookhaven contracts with an outside vendor to provide private probation services.

SECTION 2: SCOPE OF SERVICE

Any and all probation management activities and/or reporting activities performed by the Selected Vendor as a result of this RFP must be accomplished in strict compliance with any and all applicable Federal and Georgia laws, as are now in effect or hereafter may be amended. If a contradiction or conflict exists between any and all applicable Federal or Georgia laws and any terms, conditions, stipulations, etc., listed herein, the term, condition, stipulation, etc., listed herein shall not be applicable and the City shall, upon notification of a contradiction or conflict, issue an amendment to bring the term, condition, stipulation, etc., into compliance with the law.

At a minimum, the vendor shall address each of the following items within their response to provide private probation services to the City of Brookhaven, Georgia, and on behalf of the Brookhaven Municipal Court:

1. The selected vendor shall attend all regularly scheduled plea, arraignment, and non-jury hearings, and attend all other criminal hearings as requested by a judge or judge designee of the Brookhaven Municipal Court, for the purpose of providing private probation services for each probationer placed on probation during the hearings. Dates of regularly scheduled court sessions shall be given to the selected vendor at least ten (10) working days in advance of the hearing.

2. The selected vendor shall maintain for the life of the contract a probation office within the Municipal Court Building or in the Brookhaven City Limits. The response shall include the proposed office location and hours of the selected vendor's office location that will serve the Court.

3. The selected vendor shall conduct an initial interview with each probationer at the time of his or her sentencing or as soon as is practicable thereafter for purposes of explaining the scope of the Court order relative to fines, fees and/or restitution imposed as well as requirements and conditions, general and special, for probation supervision.

4. The selected vendor shall meet with each probationer placed on probation at least one (1) time every thirty (30) calendar days. Probationers that do not comply with the probation guidelines and the Brookhaven Municipal Court order may be required to meet with their supervisor more than one (1) time every month. At the discretion of the Brookhaven Municipal Court, the selected vendor shall provide intensive probation services that may include the requirement(s) for weekly reporting, home visits, telephone contacts, or a combination of any or all of these requirements. For probationers placed on intensive probation, the selected vendor shall charge the probationer no more than the amount stipulated in the Fee Schedule one (1) time every month for as long as the intensive probation requirements are in effect (this does not include in-home confinement). As part of the response to this RFP the selected vendor shall provide specifications for basic and intensive probation services as well as specifications for any other supervision programs that may be offered to the Court.

5. The selected vendor shall provide and service a Diversion Program or similar type of program, if the Brookhaven Municipal Court chooses to provide that program. In that case, a person required to participate in a Diversion Program shall be supervised in the same manner as provided herein as a probationer at no cost to the probationer.

6. The selected vendor shall provide, at no additional costs, pre-sentence investigations at the request of the Brookhaven Municipal Court.

7. The Brookhaven Municipal Court shall have the sole responsibility of determining the appropriate service(s) for each probationer. In consideration of the probation services provided by the selected service provider, the Brookhaven Municipal Court shall agree that probationers shall be charged the fees as stated in the Fee Schedule as provided in the RFP Response Package.

8. The selected vendor shall collect from the probationer if requested by the Brookhaven Municipal Court, court ordered fine, restitution and other costs associated with the court orders and sentences.

(a) Any and all fines, surcharges, court costs and other fees shall be paid to Brookhaven Municipal Court. Any and all monies collected from probationers by the selected vendor must be submitted to the Brookhaven Municipal Court on no less than a monthly basis. All funds and payments shall be accompanied with reporting and accounting through integration with the Brookhaven Municipal Court Syscon Computer software system in a format as determined by the Court.

(b) The selected vendor shall collect from probationers only those fees specified by the City, and not in excess of those charges listed in the selected vendor's Fee Schedule. The selected vendor shall not charge any probationer that has been declared by the Brookhaven

Municipal Court to be indigent, any fees without specific authorization by the Court, and then only under those circumstances provided by the Court.

9. Under no circumstances shall any portion or percentage (%) of any fine monies or court fees collected be retained by the selected service provider.

10. A nine dollar (\$9.00) per month surcharge shall be collected from each probationer placed on probation by the selected vendor, unless the probationer is exempted by the Brookhaven Municipal Court, as required by Georgia law. The surcharge shall be sent by the selected vendor to the Georgia Crime Victims Compensation Board on no less than a monthly basis pursuant to O.C.G.A. §17-15-13.

11. The selected vendor shall coordinate community service work as required as a condition of probation by the Brookhaven Municipal Court. The selected vendor shall cooperate with the Court to ensure that community service is done within the city limits of Brookhaven, Georgia, whenever possible. The Court shall determine and define the work mission for all community service. Monthly tracking and reporting of all community service work is required in a format satisfactory to the Brookhaven Municipal Court.

12. The selected vendor shall administer drug and alcohol screens to probationers as directed by the Brookhaven Municipal Court. Probationers shall assume the cost of random drug testing, and shall pay those costs pursuant to the Fee Schedule provided.

13. The selected vendor shall provide electronic monitoring of probationers at the direction of the Brookhaven Municipal Court. The cost(s) of these services shall be outlined in the Fee Schedule and shall be paid by the probationer directly to the selected vendor. Monthly tracking and reporting of all electronic monitoring is required in a format satisfactory to the Brookhaven Municipal Court.

14. The selected vendor shall prepare referrals and lend assistance to probationers either ordered to receive or who desire employment assistance or other forms of counseling.

15. The selected vendor shall recommend to the Brookhaven Municipal Court early probation release if a probationer has fulfilled all court ordered requirements and has paid all fines. Continuing monthly probation supervision fees shall not be assessed against the probationer if the Court grants early release.

16. The selected vendor shall advise the Brookhaven Municipal Court, by filing a petition for modification/revocation of probation, or probation warrant, any time a probationer fails in to comply with the Court order and conditions of probation.

17. The selected vendor shall provide notice as required by law and return to the Brookhaven Municipal Court any probationer that does not, in the opinion of the selected vendor, comply with the terms set forth in the court order of probation. Specifically, at any point in time prior to, but no later than, the mid-point juncture of any probation case in which the probationer is in material violation of the conditions of probation ordered by the Court, Contractor shall take the appropriate contempt of court and/or revocation of probation action to bring the violations to the attention of the Court. Should probationer commits material violations of the conditions of probation ordered by the Court after the mid-point juncture of the case, Contractor shall immediately take the

appropriate contempt of court and/or revocation of probation action to bring the violations to the attention of the Court. Upon such action by the selected vendor, a probation hearing will be conducted and the Court will determine if the probationer has failed to comply or is in violation of the order of the Court. The probation officer shall comply with the Court's ruling in reference to sentencing or possible revocation of probation pursuant to the Court's procedures and Georgia law.

18. The selected vendor shall assist the Brookhaven Municipal Court and law enforcement authorities in tracking absconders through the submission of an absconder investigation report which details the probationer's personal history and employment information, the circumstances of his or her violations, and his or her last known whereabouts. This report shall be made available upon request from the Court.

19. The selected vendor shall maintain case files either paper or electronic on each probationer to document compliance with the terms and conditions of probation, reporting dates, and contacts as they occur and the amounts and dates of all monies collected.

20. The selected vendor shall declare and maintain in a "confidential" manner all reports, files, records and papers of whatever kind relative to the supervision of probationers, and shall make the same available only to authorized employees of the selected vendor and authorized personnel of the City of Brookhaven, to those authorized by the Brookhaven Municipal Court, or as otherwise required by law. All information must be maintained and in compliance with the Georgia Open Records Law at all times.

21. The selected vendor shall keep all reports, files, records and papers in a centralized location convenient to the City of Brookhaven, Georgia, and shall make the same available only to the Brookhaven Municipal Court, Brookhaven city officials or employees authorized by the Brookhaven Municipal Court, and as may be required by law. Such reports, records and papers are and shall remain the property of the City of Brookhaven, Georgia. The selected vendor may retain confidential copies for its files if so desired.

22. The selected vendor shall provide the Brookhaven Municipal Court with ability to access real-time reporting that provides the status of probationers supervised by the selected service provider, the status of probationers for whom supervision or rehabilitation has been terminated, and the reason for termination. The reports shall incorporate as much detail as the Brookhaven Municipal Court may require. In addition, the selected vendor shall provide access at any time to the selected vendor's Case Management System to any authorized personnel of the Brookhaven Municipal Court. All information is declared to be confidential and shall be available only to those entities permitted by law and authorized by the court. The data security policy of the selected vendor must be a part of the RFP response.

23. The selected vendor shall provide the Chief Judge of the Brookhaven Municipal Court and Municipal Probation Advisory Council (hereafter known as the "Council"), and any others who may have authority, with a quarterly summary report that provides the number of Misdemeanor Probationers supervised by the selected vendor; and the number of Misdemeanor Probationers for whom supervision or rehabilitation has been terminated, in as much detail as the Council or Chief Judge of the Brookhaven Municipal Court may require.

24. The selected vendor shall, at a minimum, reconcile all records with the Brookhaven Municipal

Court Clerk's office on a monthly basis. Records shall be made available to the selected vendor on any normally scheduled workday, between the hours of 8:30 AM and 4:30 PM, upon request.

25. The selected vendor must have the ability to integrate the collection of data and payment information with the Brookhaven Municipal Court's Case Management System (currently **S y s c o n**). Integration must be completed per the instructions of Brookhaven Municipal Court. All information must be transferred electronically and occur on a daily, weekly, or monthly basis. The selected vendor must provide at its own expense any necessary software, hardware, equipment, and communication services in order to accomplish this transfer of data and daily court operations. The responsibility of data assurance, integrity, and security is the responsibility of the selected vendor and must meet the standards established by best business practices and regulatory statutes.

26. The selected vendor shall only accept any modification to any original Brookhaven Municipal Court sentence as made by a court of competent jurisdiction.

27. The selected vendor shall indemnify and hold harmless the City of Brookhaven, Georgia, and any and all elected officials, employees, contractors or representatives of the City of Brookhaven, Georgia, from any loss, claim, liability, penalty, fine forfeiture, demand, causes of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) [hereinafter referred to as "Indemnified Costs"] resulting from a breach by the selected vendor of any of the agreements, representations, or warranties of the selected vendor contained in this RFP or their response thereto, or caused by or resulting from any negligent, willful or otherwise tortuous act or omission, or violation of the law by the selected service provider, its agents, representatives or employees, in connection with the selected service provider's provision of services and obligations contemplated by this RFP, response thereto, or contract resulting there from. This indemnity obligation of the selected service provider under this section shall survive the expiration or termination of any resulting contract, subject to any applicable statute of limitations.

28. The selected vendor shall not own nor have a controlling interest in any finance business or lending institution that makes loans to probationers under its supervision for the payment of probation fees or fines. Neither shall the Selected Service Provider, nor any employees, agents or representatives, engage in any employment, business, or activity that interferes or conflicts with the duties and responsibilities of this RFP or resulting Contract. Furthermore, neither shall the selected vendor nor any of its employees, agents or representatives, own, operate or have any financial interest in, be an instructor at, or be employed by any private entity that provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Human Resources. Moreover, neither shall the selected service provider, nor any of its employees, agents or representatives, specify or favor, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program that a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names, addresses and telephone numbers of known, certified DUI Alcohol or Drug Use Risk Reduction Programs. Nor shall any owner, employee with a controlling interest, or principle of the selected vendor be a member of the Georgia Bar practicing criminal defense law in the DeKalb Judicial Circuit or any Municipal Courts within the DeKalb Judicial Circuit.

29. The selected vendor shall supervise all persons assigned to probation by the Brookhaven Municipal Court with a ratio of probationers to staff of no greater than two hundred and fifty active

(250) to one (1).

30. The selected vendor shall provide information in the RFP response to show that they employ at least one (1) person who is responsible for the direct supervision of probation officers employed by the selected vendor and who shall have a minimum of five (5) years' experience in corrections, parole, or probation services pursuant to O.C.G.A. §42-8-102., and the number of years the company itself has experience in providing services similar to the scope and size contemplated by this RFP.

31. The selected vendor shall ensure and provide an affidavit as part of this RFP response that any person it employs or contracts with as a private probation officer:

(a) is at least twenty-one [21] years of age at the time of appointment to the position of private probation officer pursuant to O.C.G.A. §42-8-100;

(b) has completed a standard two [2] year college course; provided however that any person who is so employed as a private probation officer as of July 1, 1996, and who has at least six [6] months of experience as a private probation officer shall be exempt from such college requirement pursuant to O.C.G.A. §42-8- 102;

(c) has received an initial forty [40] hours of orientation upon employment and has received twenty [20] hours of continuing education per annum as approved by the County and Municipal Probation Advisory Council, provided that the forty [40] hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six [6] months as of July 1, 1996 pursuant to O.C.G.A. §42-8-102; and

(d) has not been convicted of a felony *or a misdemeanor requiring proof or admission of an act of violence, dishonesty or making a false statement* [to ensure that its private probation officers have not been convicted, *as afore stated*, the selected vendor shall conduct a documented criminal record check on all its private probation officers] pursuant to O.C.G.A. §42-8-102.

32. Under no circumstances shall costs or charges be incurred by the Brookhaven Municipal Court or the City of Brookhaven from the selected vendor for services rendered to the Court or the City. Under no circumstances shall the Court or the City be invoiced, receive a statement or otherwise be billed for services rendered or for the reimbursement of expenses incurred during the rendering of services.

33. As necessary, the selected vendor shall provide updates to the City on any changes in state and/or national laws or regulations that are relevant to probation, probationary services, etc. Such updates shall be provided in writing in a manner and at a time that is convenient to the City. Such updates shall be provided at no additional cost to the City.

34. Within thirty (30) calendar days of Contract termination with the City, the selected vendor shall return / turn over to the City of Brookhaven all files, documents, correspondence, papers and databases applicable to the City's Contract and required herein, together with all relevant

information concerning the status of each and every probationer, the fines due and payable and payments made or promised, and locations and information held by the selected vendor which could assist in locating any absconders. This obligation shall be carried out by the selected vendor at no cost to the City.

35. The selected vendor shall be certified as a Georgia Crime Information Center non-terminal user, and shall thereby be granted access to both Georgia Crime Information Center and National Crime Information Center criminal history record information. The Court shall assist the selected vendor in obtaining access to criminal histories in the Georgia Crime Information Center and National Crime Information Center through local law enforcement in order for the selected vendor to conduct pre-sentence or probationer investigations as may be requested by the Court. The selected vendor shall ensure its employees maintain Security and Integrity training as outlined by the Georgia Crime Information Center.

36. Conflicts of Interest: The selected vendor shall deliver to the City Attorney an affidavit certifying that the selected vendor has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to the City. The affidavit shall further state that in rendering services to the City that no persons having any such interest shall be employed by the selected service provider. The selected vendor assumes full responsibility for knowing whether its officers, employees, agents or anyone providing services as a result of an award to this RFP have any such interest and for certifying the absence of such conflict to the City.

During the course of performing services for the City, the selected vendor shall disclose immediately to the City, by affidavit, every known or apparent conflict of interest and every ostensible or potential conflict of interest of the selected vendor's owners, officers, employees, agents or anyone providing services as a result of an award to this RFP. The duty to disclose is a continuing duty. Such disclosure is a material obligation of this agreement and the selected vendor's failure to comply with these provisions affords the City the right to pursue any and all remedies for breach of agreement. In the event of an apparent or actual conflict of interest during the course of performance, the City may terminate the agreement by written notice. Nothing herein shall be construed as limiting or waiving the right of the City to pursue damages or other remedies.

A conflict of interest includes any circumstance, which might influence or appear to influence the judgment of the selected service provider, and the selected vendor shall disclose the same.

Further, the selected vendor shall disclose the acceptance of compensation, monetary or otherwise, from more than one (1) payor or party for services on the same project or related project. The selected vendor shall disclose the direct or indirect solicitation or acceptance of financial or other consideration from parties other than the City for work on the project to which this agreement pertains. A conflict of interest of the selected vendor's owners, officers, employees, agents, or anyone providing services as a result of an award to this RFP shall be deemed a conflict of interest of the Selected Vendor, giving rise to the duty to disclose. The selected vendor shall not disclose any data, facts or information concerning services performed for the City or obtained while performing such services, except as authorized by the City in writing, or as may be required by law.

The selected vendor shall state whether any owner, employee, agent, or representative who is or will be directly involved in the project, in the last ten (10) years; (i) has or had directly or indirectly, a business relationship with the City; (ii) directly or indirectly has received revenues from the City

or (iii) directly or indirectly has received revenues from conducting business on City property or pursuant to any contract with the City.

37. The selected vendor shall indicate any service contracts that have been lost by your firm with any agencies within the last five years. The selected vendor shall give an explanation of why the service contract was lost and contact information from the city/county agency that terminated or failed to renew the contract.

REPORTING AND DATE REQUIREMENTS

The following performance measures a minimum of the type of data and reporting the City requires to track progress of the services provided. This information is a minimum and other measures may be requested to be tracked during the term of the contract.

1. Amount and Percent of fines collected.
2. Specific measures and efforts to enforce court orders.
3. Percentage of probationers completing community service.
4. Number and percentage of probationers incarcerated.
5. Average length of time for those successfully completing probation.
Additional reports required by the City. This is a starting point and additional reporting may be requested if the need arises.
6. Number of probationers completed monthly
7. Number of outstanding probationer's monthly
8. Status reports of all active probationer
9. All new cases per month
10. All warrants issued by month

11. All probation terminations – list and summary account.
12. A balance summary sheet for the month starting with beginning balance, new cases, payments received, warrant costs added, fines credited and ending balance.
13. A detailed list of new cases, showing ticket #, name, sentence date, and amount of order.
14. A warrant fees added report, showing name, ticket # and warrant fee added.
15. An adjustment report that shows the name, date, ticket #, adjustment amount, and reason.
16. A terminated cases report showing name, ticket#, sentenced date, termination date, reason, ordered amount, paid, balance.
17. A fines balance report that shows all cases with activity for the month, open cases with ticket #, name, sentence date, ordered amount, current balance, and balances for dispersals showing previous balances and current. Ending balances must agree with the balance summary report.

SECTION 3: CONTENTS OF RESPONSE

Proposals shall be divided into two (2) separately sealed envelopes. Envelope A shall be labeled “Technical Proposal – RFP # 16-330 – Probation Services” and envelope B shall be labeled “Fee Schedule” – RFP # 16-330 – Probation Services.”

A. Technical Proposal.

The Technical Proposal must address each point in the Scope of Services. In addition, please include the following information:

1. **Methodology and Technical Approach** —provide a description of procedures and methods that will be used to achieve the requirements of the contract including a description of all levels of supervision and all tools essential to providing comprehensive private probation services in accordance with the RFP. Please provide your recommendations to improve efficiencies or enhance operational services.
2. **Technology and Communications Capabilities** — provide a description of all systems that will be utilized to perform the services described in the RFP Scope of Services.
 - Describe the data and communications software and equipment that will be utilized.
 - Describe the database program that will be employed and provide “screen shots” if possible.

- Describe the technical and physical safeguards that are in place to secure and protect sensitive data from intrusion from outside sources.
 - Describe the safeguards that are in place to protect against the loss of sensitive data or to recover from an unexpected loss of data.
 - Provide reasons why your systems will assist in providing the most value to the City.
3. **Past Experience of the Firm.** Discuss at least three (3) other government/courts your firm have provided service for during the past three (3) years.
 4. **Overview of the Service Team.** Please provide names and resumes for individuals proposed to work on the Brookhaven probation services. Indicate which of the projects described in paragraph 1 above included each team member. Also indicate what percentage of each team member's time will be devoted to the Brookhaven.
 5. **Financial Statements.** Please include financial statements for the last three (3) years.

If your firm considers financial statements confidential, only include them in the original Proposal, and label all pages as "CONFIDENTIAL." *Do not* include financials in any copies or the digital version of your Proposal. If financial statements are labeled "CONFIDENTIAL," they will be returned to you after this RFP is complete.
 6. **Litigation History.** Please include your firm's past five (5) years of litigation history.

If your firm considers litigation history confidential, only include them in the original Proposal, and label all pages as "CONFIDENTIAL." *Do not* include financials in any copies or the digital version of your Proposal. If litigation history are labeled "CONFIDENTIAL," they will be returned to you after this RFP is complete.

B. Fee Schedule

Brookhaven will consider either of two approaches to compensation: a percentage of recovered Revenue or a fee for services with a contract "not to exceed" amount. Please address the following in the Compensation Proposal.

1. **Percentage Approach.** Please state the proposed percentage and any underlying assumptions, minimum commitments, guaranteed returns. If the percentage is zero, please specify.
2. **Fee for Service Approach.** Please provide a fee schedule including rates and estimated hours for each task if any. State any underlying assumptions, minimum commitments, guaranteed returns and expected project duration / schedule. If the fee is zero please state.

SECTION 4: SUBMISSION OF RESPONSE

Each Response to this RFP shall address the elements described in the **Scope of Work (Section 2) and Contents of Response-including questions (Section 3)**. **The Offeror shall describe its approach and experience in each area.**

Responses shall be as succinct as possible while completely providing all requested information. Responses should be kept to a maximum of twenty (20) pages not including required forms or certifications. All Responses shall be printed on single-sided 8-1/2" X 11" paper in size or folded to such a size. Font shall be 11 point or larger.

All Responses must be in writing delivered to:

City of Brookhaven
Purchasing Office
4362 Peachtree Road
Brookhaven, GA 30319

All Responses must be presented in a sealed opaque package with the following language clearly marked on the outside of the package:

"RFP #16-330 Probation Services"

The name and address of the Offeror must also clearly be marked on the outside of the package.

Please include one (1) original Response clearly marked "Original", and one digital copy in PDF format saved to a CD or USB flash drive.

Submittals are due no later than 2:00 p.m., December 12, 2016.

Submissions received after this date and time or at any other location cannot be accepted or considered.

The City is not responsible for delays caused by traffic, inclement weather or any other reason. The City is not responsible for late deliveries by couriers, the USPS or package express companies (UPS, Fed Ex, etc.) It is the sole responsibility of the Offeror to submit its Response before the deadline.

Electronic and facsimile submittals will not be accepted.

SECTION 5: PRE SUBMITTAL INQUIRIES

A question and answer period has been established. All inquiries must be delivered in writing (e-mail to purchasing@brookhavenga.gov) no later than **5:00 PM EDT on December 1, 2016**. After this date, questions will not be answered. Requests for information and questions should be submitted to:

City of Brookhaven
Attn: Purchasing Manager
purchasing@brookhavenga.gov

Responses to questions and any additional information relating to this RFP will be posted to the

City's website www.brookhavgov Informal verbal communications, or communications by any person other than the Purchasing Manager named in this RFP shall be considered unofficial and the City shall have no responsibility to verify any information that is not contained in this RFP or future addenda.

Please check the website regularly for updates and addenda.

SECTION 6: GENERAL EVALUATION PROCESS AND CRITERIA

A. General Information

The RFP will enable the City to gather additional information and identify one or more qualified firms to perform the services described in the Scope of Work. The City will conduct a comprehensive, fair and impartial evaluation of all Responses received. An evaluation panel will be established by the City to evaluate the Responses ("Evaluation Committee"). The Evaluation Committee may invite the most qualified Offerors to interview; however, the City retains the right to select only one Offeror. The City may also determine that no qualified Responses have been received and reject all Responses.

B. Interviews

At the City's discretion, selected Offerors may be interviewed and re-evaluated based upon the criteria set out in the RFP, or other criteria to be determined by the Evaluation Panel (i.e. unique qualities, methodologies, or approaches taken to differentiate from other Offerors). Selected Offerors may be asked to provide additional information to the Evaluation Panel regarding demonstrated competence and qualifications, feasibility of implementing the project as proposed, ability to meet schedules, costing methodology, or other factors as appropriate.

Any information received by the Evaluation Committee subsequent to the Offeror's Response will be used to further evaluate the selected Offerors to determine a rank-order. Final approval of a selected Offeror is subject to the City's Purchasing Policies.

C. Past Performance – References

The City, at its discretion, may review past performance of the Offeror. Exhibit E of this RFP is a sample client authorization letter. Offeror shall include three to five reference projects from the past three to five years. Projects shall be a similar scope to the Project.

References should include the following: name of the organization, contact information, description of the project, brief summary of services provided and period of performance. The sample reference letter shall be prepared on the Offeror's letterhead, addressed to the contact at the reference, signed by the Offeror and included with the submittal.

D. Negotiation and Best and Final Offer (as applicable)

1. If the City deems it is in its best interest to retain the services of one or more Offerors,

the City reserves the right to negotiate a revised scope and or fees. Negotiations will encompass all phases of work, including but not limited to: hourly rates, fees for services, markups for overhead and profit on subcontractors, a “not to exceed” contract amount, as well as any other items the City deems appropriate.

2. If negotiations are successful, the City and the highest ranking Offeror will enter into an agreement to develop the services as outlined in this RFP. If an acceptable agreement cannot be reached between the City and the highest ranking Offeror, the City may choose to negotiate with other Offeror(s).

3. Qualified firms submitting Responses will be required to submit financial statements for a minimum of three recording periods prior to contract award.

4. Separate meetings with more than one Offeror may be conducted during the same time frame; however, negotiation sessions with an Offeror will not be held in the presence of another Offeror.

5. Offerors submitting Responses should be aware that the Evaluation Panel has sole discretion to determine what constitutes the “best value and offer” for the City. Consequently, Offerors are urged to submit best possible terms in their original submittal.

E. Evaluation Criteria

Proposals will be evaluated using the following criteria:

1. Demonstrate Past Experience Performing Probation Services for Other Local Governments. -- 20-- Points
2. Proposed Experienced Project Team. – 20 - Points
3. Methodology and Technical Approach. – 20 - Points
4. Technology and Communication Capabilities -- 20 -- Points
5. Financial Strength of Firm – 10 -- Points
6. Litigation History. – 10 -- Points

SECTION 7: SCHEDULE OF EVENTS

Pre-Submittal Conference –None

Deadline for questions –December 1, 2016 5:00 p.m.

Publication of Questions and Answers to the City website – December 6, 2016.

2016 Submittals due –December 12, 2016; 2:00 p.m.

SECTION 8: TERMS AND CONDITIONS

All Responses and supporting materials as well as correspondence relating to this RFP become property of the City when received. Any proprietary information contained in the Response should be so indicated; however, a general indication that the entire contents, or a major portion, of the Response is proprietary will not be honored. The following terms and conditions shall also apply:

A. All applicable Federal and State of Georgia laws, City of Brookhaven and DeKalb County ordinances, licenses and regulations of all agencies having jurisdiction shall apply to Offerors throughout and are incorporated herein.

B. Professionals requiring special licenses must be licensed in the State of Georgia, and shall be responsible for those portions of the work as may be required by law.

C. No Response shall be accepted from, and no contract will be awarded to, any person, firm, or corporation that (i) is in arrears to the City with respect to any debt, (ii) is in default with respect to any obligation to the City, or (iii) is deemed irresponsible or unreliable by the City.

D. The City shall be able to request of the Offerors satisfactory evidence that they have the necessary financial resources to accomplish the requirements of the RFP.

E. From the date this RFP is issued until a firm is selected, Offerors are not allowed to communicate with any staff or elected officials of the City regarding this procurement, except at the direction of the Purchasing Manager for the City and procurement agent in charge of this solicitation. Any unauthorized contact will disqualify the Offeror from further consideration. Contact information for the single point of contact is as follows:

Purchasing Manager: Tyra Little Address:

4362 Peachtree Road

Brookhaven, GA 30319

E-mail Address: purchasing@brookhavenga.gov

F. The costs for developing and delivering Responses to this RFP and any subsequent presentations of the Response as requested by the City are entirely the responsibility of the Offeror. The City is not liable for any expense incurred by the Offeror in the preparation and presentation of its Response.

G. While the City has every intention to make an award as a result of this solicitation, issuance of the RFP in no way constitutes a commitment by the City to award and execute a contract. Upon a determination such actions would be in its best interest, the City, in its sole discretion, reserves the right to:

1. Cancel or terminate this RFP at any time. A notice of cancellation will be issued. If the RFP is cancelled, the City will not reimburse any Offeror for preparation of its Response. Responses may be returned upon request if unopened;
2. Reject any or all Responses received, make a contract award based directly on the Responses received in the best interest of the City, in its sole discretion, or enter into further discussions with one or more Offerors;
3. Waive and/or amend any undesirable, inconsequential, or inconsistent provisions/specifications of this RFP which would not have significant impact on any Response;
4. Make partial award or no award if it is in the best interest of the City to do so; and
5. Terminate any contract if the City determines adequate funds are not available.

SECTION 9: MODEL CONTRACT

The form of contract ("Model Contract") the City intends to execute with the selected Offeror is included in this RFP as Exhibit G. Offerors are urged to read this Model Contract carefully prior to submitting a Response.

In general, the City is unable to negotiate or revise contract provisions. If an Offeror believes certain contract provisions are out of date, not applicable or place an undue burden or cost on the Offeror or the City, the Offeror must address these concerns in writing during the question and answer period. The Purchasing Manager will review and determine the appropriate response. If the City determines a change is warranted; an addendum will be posted to this RFP. If a firm is unwilling to execute the Model Contract, whether modified by addendum or not, a Response should not be submitted.

The City may deem any Response containing contract changes or exceptions non-responsive and reject the Response.

This RFP document, together with its addenda, amendments, attachments, modifications, Offeror's Response, including any amendments, a "best and final offer," and any clarification question responses, when executed, becomes part of the contract between the parties. The City does not intend to accept alternate terms and conditions to the Model Contract. All questions are due in writing no later than the date stated on the first page of this RFP. Questions received after this date and time may not be answered.

Prior to award, the apparent selected Offeror may be required to enter into discussions with the City to resolve any contractual differences before an award is made. These discussions shall be finalized and all exceptions resolved within one (1) week of notification; if not, the Response may be rejected and discussions initiated with the second highest scoring Offeror.

The selected Offeror shall not begin performance of services requested by this RFP prior to the execution of a formal written contract (based on the Model Contract) by the City and Offeror. Any Offeror beginning performance prior to the execution of a contract shall be deemed to be proceeding at Offeror's risk, and shall not be entitled to any compensation for such performance.

In addition, the City reserves the right to withdraw or cancel an award.

The City may, by written notice to the selected Offeror, terminate any resulting contract without cause. The City must give notice of termination to the selected Offeror at least thirty (30) days prior to the effective date of termination.

SECTION 11: EXHIBITS

EXHIBIT A: CERTIFICATION OF CONSULTANT – DRUG-FREE WORKPLACE

EXHIBIT B: CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(B)(1)

EXHIBIT C: AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION

EXHIBIT D: CERTIFICATION OF CONTRACTOR - GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

EXHIBIT E: SAMPLE CLIENT AUTHORIZATION LETTER

EXHIBIT F: INSURANCE REQUIREMENTS

EXHIBIT G: MODEL CONTRACT

EXHIBIT A
CERTIFICATION OF CONSULTANT
DRUG-FREE WORKPLACE

I hereby certify that I am a principle and duly authorized representative of _____ (“Consultant”), whose address is _____ and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied with in full; and
- (2) A drug-free workplace will be provided for Consultant’s employees during the performance of the Agreement; and
- (3) Each subcontractor hired by Consultant shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. Consultant shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with Consultant, _____ certifies to Consultant that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3”; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

CONSULTANT:

Date: _____

Signature: _____

Title: _____

EXHIBIT B
CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(B)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Brookhaven has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS
THE _____ DAY OF _____.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT C
AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION

By executing this affidavit under oath, as an applicant for a City of Brookhaven, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit, execution of contract or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Brookhaven license/permit and/or contract for

[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

1) _____ I am a United States citizen

OR

2) _____ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States. *

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: _____ Date: _____

Printed Name: _____

*Alien Registration number for non-citizens _____

****PLEASE INCLUDE A COPY OF YOUR PERMANENT RESIDENT CARD, EMPLOYMENT AUTHORIZATION, GREEN CARD, OR PASSPORT WITH A COPY OF YOUR DRIVER'S LICENSE IF YOU ARE A LEGAL PERMANENT RESIDENT (#2).**

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____.

Notary Public: _____

My Commission Expires: _____

*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of "alien", legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

EXHIBIT D
CERTIFICATION OF CONTRACTOR
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

I hereby certify that I am a principal and duly authorized representative of _____, ("Contractor"), whose address is _____.

Contractor hereby agrees to comply with all applicable provisions and requirements of the Georgia Security and Immigration Compliance Act of 2006 (the "Act"), as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth below.

Contractor agrees to verify the work eligibility of all of newly hired employees through the U.S. Department of Homeland Security's *Employment Eligibility Verification (EEV) / Basic Pilot Program*, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-.02 of the Rules and Regulations of the State of Georgia. As of July 1, 2007, the verification requirement applies to contractors and subcontractors with five-hundred (500) or more employees.

Contractor understands that the contractor and subcontractor requirements of the Act apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.

Contractor understands that the following contract compliance dates set forth in the Act apply to the Contract Agreement, pursuant to O.C.G.A. 13-10-91:

On or after July 1, 2007, to public employers, contractors, or subcontractors of 500 or more employees;

On or after July 1, 2008, to public employers, contractors, or subcontractors of 100 or more employees; and

On or after July 1, 2009, to all other public employers, their contractors, and subcontractors.

To document the date on which the Act is applicable to Contractor, and to document Contractor's compliance with the Act, the undersigned agrees to initial one of the three (3) lines below indicating the employee number category applicable to Contractor, and to submit the indicated affidavit with the Contract Agreement if the Contractor has 500 or more employees

Contractor has:

- _____ 500 or more employees [Contractor must register with the *Employment/Eligibility Verification/Basic Pilot Program* and begin work eligibility verification on July 1, 2007];
- _____ 100-499 employees [Contractor must register with the *Employment Eligibility Verification/Basic Pilot Program* and begin work eligibility verification by July 1, 2008]; or
- _____ 99 or fewer employees [Contractor must begin work eligibility verification by July 1, 2009].

Contractor further agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with the Contract Agreement, as required pursuant to O.C.G.A. 13-10-91.

Contractor agrees to obtain from any subcontractor that is employed by Contractor to provide services connected with the Contract Agreement, the subcontractor's indication of the employee number category applicable to the subcontractor.

Contractor agrees to secure from any subcontractor engaged to perform services under this Contract an executed "Subcontractor Affidavit," as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

Contractor agrees to maintain all records of the subcontractor's compliance with O.C.G.A. Sections 13-10-90 and 13-10-91 and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia.

CONTRACTOR:

Date: _____

Signature: _____

Title

EXHIBIT E
SAMPLE CLIENT AUTHORIZATION LETTER

Offeror's Name
Offeror's Address
City, State Zip

Date: _____

Client name
Client address
City, State Zip

Dear: _____

Our firm *Offeror's Name* is currently responding to the City of Brookhaven Request for Proposals # 16-330 – Probation Services. We would like to use *project name* where our organizations worked together as one of our firm's references.

This letter authorizes your organization to discuss our firm and the Project with the City of Brookhaven and their representatives.

Thank you for your support.

Sincerely;

EXHIBIT F

INSURANCE REQUIREMENTS

Within 10 days of Notice of Award, and at all times that this Contract is in force, the Contractor shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-10 or higher and acceptable to the City covering:

1. Workers' Compensation & Employer's Liability Insurance. Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.
3. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage if automobiles are to be used in the delivery of or in the completion of services and work or driven onto the City's property. Insurance shall include all owned, non-owned and hired vehicle liability.
4. Umbrella Insurance with limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$3,000,000.
5. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
6. Professional (Errors and Omissions) Insurance- For Professional Services and for all Design/Build Projects with limits of liability of not less than \$3,000,000 per occurrence or claim / \$3,000,000 policy aggregate. Such policy shall also include coverage for losses arising from the breach of information security or cyber liability (including Errors & Omissions, Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage, injury and loss caused by error, omission or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Contract. The policy shall be amended to include independent contractors providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, wrongful acts, contractual liability, privacy policy, and insured versus insured. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six (36) months after completion of services.
7. Fidelity Bond (Employee Dishonesty) in the sum of not less than \$50,000.

All such insurance shall remain in effect until final payment is made and the Project is accepted by the City. If the Contractor receives notice of non-renewal or material adverse change of any of the required coverages, the Contractor shall promptly advise the City in writing. Failure of the Contractor to promptly notify the City on non-renewal or material adverse change of any of the required coverages terminates the Agreement as of the date that the Contractor should have given notification to the City. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) A provision that coverage afforded under such policies shall not expire, be canceled or altered without at least thirty (30) days prior written notice to the City.
- (b) Workers' Compensation and Employer's Liability and Property insurance policies shall contain a waiver of subrogation in favor of the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers.
- (c) Commercial General Liability, Automobile Liability Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) insurance policies shall include an endorsement making the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers Additional Insureds under such policies.

A copy of these endorsements shall be provided to the City.

Certificates of Insurance showing that such coverage is in force shall be filed under this Contract by the Contractor to the City.

The obligations for the Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of the Contractor whether or not same is covered by insurance.

Certificate Holder should read: The City of Brookhaven, 4362 Peachtree Road, Brookhaven, Georgia 30319.

Exhibit G



Sample Contract

This **CONTRACT** made and entered into this ____ day of _____, 2016 by and between the City of Brookhaven, Georgia (Party of the First Part, hereinafter called the "City"), and, _____ (Party of the Second Part, hereinafter called the "Service Provider" or "Contractor").

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

The services to be performed under this Contract shall commence upon execution of this Contract. The initial term of this Contract shall be through December 31, 2016. This Contract shall terminate absolutely and without further obligation on the part of the City on December 31, 2016 and each December 31 of each succeeding and renewed year, as required by O.C.G.A. §36-60-13, as amended, unless terminated earlier in accordance with the provisions of this Contract.

This Contract may be renew for one (1) additional twelve-month term, upon the same terms and conditions, as provided for in this Contract, unless terminated by the City, by notice to service provider or termination and non-renewal by December 31 of the Contract year. This Contract will terminate on December 31, 2017.

2. ATTACHMENTS:

The following documents are attached and are specifically incorporated into this Contract by reference:

Exhibit A: General Conditions
Exhibit B: Fees/Rate
Exhibit C: Scope of Services
Exhibit D: Timeline
Exhibit E: Contractor's Affidavit and Agreement
Exhibit F: Drug Free Workplace
Exhibit G: Purchasing Policy Addendum

3. PERFORMANCE:

Service Provider agrees to furnish all skill and labor of every description necessary to carry out perform the services in accordance with the Contract Documents (the "work").

4. PRICE:

As full compensation for the performance of this Contract, the City shall pay the Service Provider for the actual quantity of work performed. The amount shown on Exhibit B is the total obligation of the City pursuant to O.C.G.A section 36-60-13(a) (3). The fees for the work to be performed under this Contract shall be charged to the City in accordance with the rate schedule shown on Exhibit B. The City agrees to

pay the Service Provider following receipt by the City of a detailed invoice, reflecting the actual work performed by the Service Provider.

5. INDEMNIFICATION AND HOLD HARMLESS:

[See Section 13 of Exhibit A---General Conditions]

Service Provider further agrees to protect, defend, indemnify, and hold harmless the City, its council members, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the Service Provider.

6. TERMINATION FOR CAUSE:

The City may terminate this Contract for cause upon ten (10) days prior written notice to the Service Provider of the Service Provider's default in the performance of any term of this Contract. Such termination shall be without prejudice to any of the City's rights or remedies provided by law.

7. TERMINATION FOR CONVENIENCE:

The City may terminate this Contract for its convenience at any time upon thirty (30) days written notice to the Service Provider. In the event of the City's termination of this Contract for convenience, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider who shall itemize each element of performance.

8. TERMINATION FOR FUND APPROPRIATION:

The City may unilaterally terminate this Contract due to a lack of funding at any time by written notice to the Service Provider. In the event of the City's termination of this Contract for fund appropriation, the Service Provider will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

9. CONTRACT NOT TO DISCRIMINATE:

During the performance of this Contract, the Service Provider will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability which does not preclude the applicant or employee from performing the essential functions of the position. The Service Provider will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability which does not preclude the applicant from performing the essential functions of the job. The Service Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each subservice provider, providing that the foregoing provisions shall not apply to contracts or subservice providers for standard commercial supplies of raw materials.

10. ASSIGNMENT:

The Service Provider shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the City in writing.

11. WAIVER:

A waiver by either party of any breach of any provision, term, covenant, or condition of this Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

12. SEVERABILITY:

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

13. GOVERNING LAW:

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia. This Contract has been signed in DeKalb County, Georgia.

14. MERGER CLAUSE:

The parties agree that the terms of this Contract include the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

(Signatures Next Page)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

Brookhaven, GEORGIA

By: _____
City Manager
City of Brookhaven, Georgia

ATTEST:

City Clerk

[CITY SEAL]

APPROVED AS TO FORM:

City Attorney

SERVICE PROVIDER:

BY: _____
Signature

Print Name

Title

ATTEST:

Signature

Print Name
Corporate Secretary

(Seal)

EXHIBIT A

GENERAL CONDITIONS

1. SCOPE OF WORK

The Contract will be to provide the work to the City in accordance with the Contract Documents. All work shall be performed in accordance with the Fees/Rate attached hereto as Exhibit "B".

2. REGULATIONS

- 2.1 The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.
- 2.2 The Contractor shall obtain all permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.
- 2.3 During the performance of this Contract, the Contractor shall keep current and, if requested by the City, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.

3. INTENTIONALLY OMITTED

4. CONTRACTOR'S PERSONNEL

- 4.1 The Contractor will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Contractor and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.
- 4.2 The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.
- 4.3 Should the Contractor engage employees who are illiterate in English, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Contractor shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Contractor for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Contractor must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor. Copies shall be provided to the City, if requested.

- 4.5 The Contractor shall transfer promptly from the City any employee or employees that the City advises are not satisfactory, and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Contractor.
- 4.6 The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City.
- 4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- 4.8 While working on city property all Contractors' employees shall wear neat-appearing business casual attire or uniforms with the company name and/or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- 4.9 Designation of Project Manager - The Contractor shall designate a Project Manager acceptable to the City for all purposes related to the work. The initial Project Manager shall be Craig Bowen.
 - 4.9.1 The Project Manager shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Project Manager shall provide the City with an appropriate status report on the progress of the project.
 - 4.9.2 The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.
 - 4.9.3 In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 4.5), the position shall be assumed by an individual with equivalent qualifications, experience, and knowledge. Such replacement shall require the City's prior approval.
- 4.10 The process by which the implementation partner requests the removal of a team member from the project. If a Contractor replaces a proposed team member, the Contractor shall replace that team member with a new team member of similar experience. The City reserves the right to accept or reject any proposed or replacement team member, with or without cause, at any time during the duration of the project.

5. TOOLS AND EQUIPMENT

It shall be the sole responsibility of the Service Provider to provide for all tools, parts, and equipment necessary to perform work under this Contract.

6. PERFORMANCE REQUIREMENTS

- 6.1 The Contractor shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications and industry standards. The Contractor shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.

- 6.2 The Contractor's personnel shall perform work in compliance with all Federal, State, and City of Brookhaven regulations.
- 6.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative (CAR).
- 6.4 Any work required beyond that which is specified herein shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.
- 6.5 The Contractor shall utilize maximum safety precautions. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Contractor is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended or stored on the project site at any time.

7. CONFIDENTIAL INFORMATION

- 7.1 In the course of performing the Contract work, the Service Provider may gain access to security-sensitive and other sensitive information of the City.
- 7.2 The Service Provider agrees to hold all City data and information in confidence and to make such information known only to its employees and subcontractors who have a legitimate need to know such information and only after advising such persons of the Service Provider's non-disclosure obligations.
- 7.3 The Service Provider shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Service Provider's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.
- 7.4 The Service Provider shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Service Provider employs and takes to protect its own information, but in no event shall the Service Provider use less than reasonable efforts to protect the City's information.
- 7.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract.

8. USE OF PREMISES

During the progress of the work specified herein, to the extent any work is performed on the City's premises, the Service Provider shall keep the premises free from accumulation of waste materials, and other debris resulting from the work. At the completion of each work day, the Service Provider shall remove daily all waste materials and debris from, and about the premises as well as tools, equipment, machinery and surplus material, and leave the site clean and ready for occupancy by the City.

9. SAFETY AND PROTECTION

The Service Provider shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Service Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work site and other persons including, but not limited to, the general public who may be affected thereby.

10. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

- 10.1 The City shall pay the Contractor, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Contractor to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in this Section.
- 10.2 The City shall pay the Contractor the price as set forth within 30 days after completion of the services, or 30 days after the City's receipt of the invoice, whichever is later. The Contractor shall invoice the City for the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.
- 10.3 The Contractor shall invoice with such supporting documentation and other backup material as the City may reasonably require.
- 10.4 The Contractor shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Contractor for the City under this Contract.
- 10.5 The City shall pay the undisputed amount of the Contractor's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory services. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.
- 10.6 The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and expenses incurred for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.
- 10.7 The Contractor shall submit all invoices to: City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road, Brookhaven, GA 30319.

11. COMPLIANCE WITH LAWS AND REGULATIONS

- 11.1 The Service Provider shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Brookhaven, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Service Provider's performance of its obligations and functions hereunder; the Service Provider shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonably request in connection with any such challenge or contest by the City.
- 11.2 The Service Provider shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or federal, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees therefore.

- 11.3 The Service Provider shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Service Provider's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02.

12. SERVICE PROVIDER'S LIABILITY

The Service Provider shall be responsible for the prompt payment of any fines imposed on the City or the Service Provider by any other federal, state or local governmental agency as a result of the Service Provider's, or its subcontractor's (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Service Provider under this Section 12 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 13 hereof, and such liability shall survive the expiration or earlier termination of this Contract.

13. INDEMNIFICATION AND INSURANCE

- 13.1 **Non-Professional Services Indemnity.** The Service Provider shall indemnify, defend and hold harmless the City, and the members (including, without limitation, members of the City's Council, and members of the boards and of the City), officers, employees and agents of each, from and against any and all liabilities, losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of loss of any property of the City, or any property of, injury to or death of any person resulting from the negligent acts or omissions of the Service Provider's directors, officers, agents, employees, subcontractors, licensees or invitees, in connection with the performance of this contract, **unless** such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused by the City's negligence or by the joint negligence of the City and any of its, officers, agents, employees, subcontractors, licensees, or invitees of the City, or (ii) arising out of or in connection with the failure of the Service Provider to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Service Provider, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 13.4 below by or in favor of any person described in Section 13.5 below, or (iv) arising out of or in connection with any action by Service Provider or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Service Provider reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Service Provider or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. The indemnification provisions of this Section 13.1 shall survive the expiration or earlier termination of this Contract with respect to any negligent acts or omissions occurring during the term of the Contract. This Non-Professional Services Indemnity shall not apply to any professional services, as defined in the following paragraph, nor to any act, error, or omission arising out of such professional services.

Professional Services Indemnity. Notwithstanding anything contained in the foregoing indemnity, any claim for indemnity by the City for claims of third parties alleging harm due to the professional services provided by Service Provider, to the fullest extent permitted by law, Service Provider shall indemnify City from and against losses, damages, and judgments arising from such claims by third parties, but only to the extent they are found to have been caused by a negligent act, error or omission of Service Provider or its sub-Service Providers in the performance of professional services under this Agreement. For the purposes of this

Professional Services Indemnity, “professional services” means those services performed by a licensed professional employed by Service Provider or a person performing such services under the direct supervision of a licensed professional.

- 13.2 In addition to indemnification provisions stated above, if the City’s use of any service, software, firmware, programming, or other item provided by or on behalf of the Service Provider is enjoined due to infringement of another person or entity’s intellectual property rights, the Service Provider shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.
- 13.3 The Service Provider shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Service Provider shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution with respect to any injury that may occur to any building, structure or utility in consequence of its work. The Service Provider will notify the City in writing of any claim made or suit instituted against the Service Provider because of its activities in performance of the Contract.
- 13.4 No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Service Provider hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Service Provider pursuant to this Contract.
- 13.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Service Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Service Provider under this Section 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Service Provider or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- 13.6 No provisions of Section 13 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.
- 13.7 Insurance

13.7.1 General Liability and Automobile Liability. The Service Provider shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Service Provider, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers, agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Service Provider's performance of the Contract work:

(1) Commercial general liability insurance with coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence, and with contractual liability coverage for Service Provider's covenants to and indemnification of the City under the Contract, and

(2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident or occurrence covering each motor vehicle operated on City property.

13.7.1.1 Self-Insured Retention. Service Provider's commercial general liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, if the value of the Contract is less than \$1,000,000, and not be subject to a self-insured retention exceeding \$100,000, if the Contract is \$1,000,000 or more, unless approved by the City Manager. Service Provider's automobile liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, unless approved by the City Manager.

13.7.1.2 Additional Insured Endorsement. Service Provider agrees and shall cause the City their members (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance.

13.7.2 Workers' Compensation and Employer's Liability. If Service Provider has any employee working on City property, Service Provider shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Service Provider's employer's liability insurance shall not be less than \$100,000 for "each accident," \$500,000 for "disease policy limit," and \$100,000 for "disease each employee." If the Service Provider is self-insured, the Service Provider shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.

13.7.3 Professional Liability Insurance. The Service Provider shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least ONE MILLION DOLLARS (\$1,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Service Provider from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.

13.7.4 Health Insurance. Not applicable.

13.7.5 Garage Liability Insurance. Not applicable.

13.7.6 Garage Keeper's Legal Liability Insurance. Not applicable.

13.7.7 Crime Coverage. Not applicable.

13.7.8 Pollution Liability Insurance. Not applicable.

13.7.9 Deductibles. The Service Provider's policies of insurance required by this Section 13.7 may require the Service Provider's payment of a deductible, provided the Service Provider's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Service Provider pay the deductible prior to its insurer's payment of the claim.

13.7.10 Other Insurance Requirements. All insurance policies required by this Section 13.7 shall provide that they are primary insurance with respect to any other valid insurance the City may possess, and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 14.2 of these General Conditions, and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Service Provider's execution of the Contract. The Service Provider shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Service Provider's required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of this Section 13.7.10, an "adverse material change" shall mean any reduction in the limits of the insurer's liability below the minimum limits of insurance required by this Section 13, non-renewal, or cancellation of any insurance coverage, or any increase in the Service Provider's self-insured retention. Prior to the expiration of any such policy, the Service Provider shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. In the event of an adverse material change, the Service Provider shall, within five (5) days after such adverse material change, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Service Provider fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Service Provider, immediately terminate this Contract upon written notice to the Service Provider. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Service Provider shall comply with all reasonable requests of the City Manager with respect thereto.

14. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE

14.1 A surety Bond/Letter of Credit is not required for this Contract.

14.2 Liability Insurance Companies furnishing insurance coverage required by these General Conditions shall (a) be approved to issue insurance policies in the State of Georgia, and (b) must

have no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of A.M. Best's Insurance Reports. If the liability insurer is rated by A.M. Best's Insurance Reports at an "A-" Financial Rating and a Financial Size Category of "Class VIII" or higher than the City Manager may waive the requirement for the insurer to be approved by the State of Georgia.

15. CONTRACT ADJUSTMENTS

- 15.1 Notwithstanding any provision herein to the contrary, the City reserves the right to modify at any time the nature, method, scope, frequency, or timing of the Service Provider's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Service Provider's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Service Provider's compensation will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good faith negotiation by the City and the Service Provider and, to the extent possible, by reference to any unit costs already established in the Proposal. Without exception, all deletions or additions to the scope of work will be set forth in a written Amendment to this Contract.
- 15.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Service Provider and the City fail to reach agreement on the adjusted compensation within thirty (30) days after the date of the Contract Adjustment.
- 15.3 Notwithstanding the foregoing, there shall be no upward adjustment of the compensation on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of the Service Provider, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

16. SUBCONTRACTORS

- 16.1 The Contractor shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, management, or employees common to the Contractor; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Contractor shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Contractor from using the services of a common carrier for delivering goods to the City. The City approves the sub-contractors listed in the Statement of Qualifications.
- 16.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Contractor and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 16. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Contractor. However, such application shall neither make any subcontractor a party to this Contract, nor make such subcontractor a third party beneficiary hereof.
- 16.3 In the event that the Contractor employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Contractor for work performed by a

subcontractor) shall be submitted to the City by the Contractor and the City shall pay all compensation to the Contractor. It shall be the sole responsibility of the Contractor to deal with a subcontractor with respect to the collecting and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

17. DEFAULT AND TERMINATION

17.1 In the event that:

- 17.1.1 the Service Provider shall fail to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first failure shall have been given to the Service Provider, but whether or not the Service Provider shall have remedied any such failure); or
- 17.1.2 the Service Provider shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Service Provider of a written notice of such breach or default; or
- 17.1.3 the Service Provider's occupational or business license shall terminate or the Service Provider shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or
- 17.1.4 the Service Provider fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or
- 17.1.5 the Service Provider shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- 17.1.6 the Service Provider shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
- 17.1.7 there is any assignment by the Service Provider of this Contract or any of the Service Provider's rights and obligations hereunder for which the City has not consented in writing; or
- 17.1.8 the Service Provider shall default on any other agreement entered into by and between Service Provider and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Service Provider. In the event that the City terminates this Contract for default, or the Service Provider abandons or wrongfully terminates the Contract, the Service Provider shall be paid for compensation earned to the date of termination or abandonment (but the City

shall have the right to reduce by off-set any amounts owed to the Service Provider hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Service Provider to the City), but the Service Provider shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Service Provider's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.

- 17.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Service Provider thirty (30) days written notice. In that event, the Service Provider shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Service Provider shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Service Provider be entitled to compensation for work not performed or for anticipatory profits. Service Provider shall justify its claims, as requested by the City, with accurate records and data.
- 17.3 Bankruptcy and Liquidation - In the event the Service Provider (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Service Provider or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:
- (i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.
 - (ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to, as applicable, the Service Provider or the bankruptcy trustee or receiver. The Service Provider or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.

(iii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

18. CITY'S AUTHORIZED REPRESENTATIVE

During the term of this Contract, the City Manager or designee may from time to time designate an individual to serve as the City's Authorized Representative (CAR) and an Assistant CAR designated to serve in that capacity in the absence of the CAR, who shall have such authority to act on the City's behalf as the City Manager may from time to time actually delegate to such person, but in no event shall the CAR have authority to modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

19. ASSIGNMENT

Neither this Contract nor any of the Service Provider's rights or obligations hereunder may be assigned by the Service Provider without the City's prior written consent, which consent may be granted or withheld at the City's sole discretion. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Service Provider is traded on a national stock exchange or in a generally recognized over the counter securities market) any change in ownership of or power to vote a majority of the outstanding voting stock or ownership interests of the Service Provider shall constitute an assignment of this Contract for purposes of this Section. In the event the Service Provider assigns or subcontracts or attempts to assign or subcontract any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 17 hereof.

20. NOTICES

- 20.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Contractor may be hand delivered, mailed via U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Contractor's address set forth in the Proposal. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to the Contractor, or three (3) days following submission to the Contractor by U.S. Certified Mail.
- 20.2 Unless otherwise stated herein, all notices or other writings which the Contractor is required or permitted to give to the City may be hand delivered to the City Manager, mailed via U.S. Certified Mail, or sent next-day delivery by a nationally-recognized overnight delivery service. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to City, or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

City of Brookhaven, GA
ATTN: City Manager
4362 Peachtree Road
Brookhaven, GA 30319

Consultant
General
Attn: Name
Address
City, Georgia 30XXX

20.3 Either party may change its notice address by written notice to the other given as provided in this section.

21. NONDISCRIMINATION

21.1 During the performance of this Contract, the Service Provider, for itself, its assignees and successors in interest agrees as follows:

- 21.1.1 Compliance with Regulations. The Service Provider shall comply with the Laws and Regulations as they may be amended from time to time (hereafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.
- 21.1.2 Nondiscrimination. The Service Provider, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The Service Provider shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.
- 21.1.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive proposing or negotiation made by the Service Provider for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Service Provider of the Service Provider's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 21.1.4 Information and Reports. The Service Provider shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Service Provider is in the exclusive possession of another who fails or refuses to furnish this information, the Service Provider shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 21.1.5 Sanctions for Noncompliance. In the event of the Service Provider's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such Contract Sanctions as it may determine to be appropriate, including but not limited to:

21.1.5.1 Withholding of payments to the Service Provider under the Contract until the Service Provider complies, and/or

21.1.5.2 Cancellation, termination or suspension of the Contract, in whole or in part.

21.1.6 Incorporation of Provisions. The Service Provider shall include the provisions of subsections 21.1.1 through 21.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Service Provider shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Service Provider may request the City to enter into such litigation to protect the interest of the City and, in addition, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.

21.2 The Service Provider assures the City that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, marital status, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision shall bind the Service Provider from the period beginning with the initial solicitation through the completion of the Contract.

22. COPYING DOCUMENTS

The Service Provider hereby grants the City and its agent's permission to copy and distribute any and all materials and documents contained in, comprising, or which are otherwise submitted to the City with or in connection with the Service Provider's Proposal or which are contained in the Contract Documents (the "Submittals"). The permission granted by the Service Provider shall be on behalf of the Service Provider and any and all other parties who claim any rights to any of the materials or documents comprising the Submittals. Such permission specifically authorizes the City and its agents to make and distribute such copies of the Submittals or portions thereof as may be deemed necessary or appropriate by the City for its own internal purposes or for responding to requests for copies from any member of the public regardless of whether the request is specifically characterized as a public records request pursuant to Georgia Code. This provision shall survive the expiration or termination of the Contract.

23. GENERAL PROVISIONS

23.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Proposals, all Addendum(s) issued prior to execution of this Contract, these General Conditions and the Request for best and final offer. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated herein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions, (iv) the Fees/Rate, (v) the Proposal Forms, and (vi) the Request.

23.2 This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or condition of this Contract shall

be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.

- 23.3 The Service Provider shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Service Provider's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Service Provider shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 23.4 The Service Provider warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Service Provider or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Service Provider shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Service Provider shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- 23.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Service Provider. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Service Provider waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Service Provider agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City
- 23.6 The section headings herein are for the convenience of the City and the Service Provider, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.
- 23.7 The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 23.8 The delay or failure of the City at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Service Provider shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.
- 23.9 In any litigation commenced between the Service Provider, the City, and/or a third party arising out of the Service Provider's operations and activities at the premises or in any action to enforce the terms of this Contract, then the non-prevailing party shall pay all costs and reasonable attorney's fees and other court or legal costs incurred by or imposed upon the prevailing party in connection with such litigation for all trial and appellate proceedings in proportion equal to the percentage liability of the non-prevailing party as ultimately adjudicated using principles of comparative fault. The parties shall give prompt notice to the other party of any claim or suit instituted against it by such third party. The provisions of this Section shall survive the

acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.

- 23.10 The City shall have the right to recover from the Service Provider all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, attorneys' fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.
- 23.11 The Service Provider shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any current employee of the City.
- 23.12 The Service Provider shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Service Provider shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.
- 23.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Service Provider (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Service Provider under this Contract; whenever the City so cures a default by the Service Provider, all costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Service Provider to the City on demand.
- 23.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Service Provider is otherwise entitled hereunder, an amount equal to any liabilities of the Service Provider to the City which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Service Provider shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.
- 23.15 The Service Provider is an independent Contractor and nothing contained herein shall be construed as making the Service Provider an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Service Provider acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Service Provider with respect to any employee of the Service Provider or of its subcontractors.
- 23.16 The Service Provider and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Service Provider and its subcontractors shall account for all expenses of any nature related to transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Service Provider and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Service Provider's

and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Service Provider and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Service Provider and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Service Provider and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Service Provider, or a third party, the Service Provider shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Service Provider and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Service Provider to the City, the Service Provider shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of eighteen (18%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Service Provider has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Service Provider.

- 23.17 The Service Provider and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.
- 23.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- 23.19 Time is of the essence for the performance of each of the Service Provider's obligations under this Contract.

- 23.20 In computing any period of time established under this Contract, except as otherwise specified herein the word “days,” when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- 23.21 The Service Provider agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- 23.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Service Provider for loss of business or damages of any nature whatsoever to the Service Provider occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or Service Providers.
- 23.23 The Service Provider and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.
- 23.24 At the option of the Service Provider, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Service Provider to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The City shall have no liability to the Service Provider or any governmental agency resulting from the purchase by that agency of products and/or services from the Service Provider in connection with this Contract.

24. GRATUITIES, REBATES, OR KICKBACKS.

- 24.1 GRATUITIES. It shall be unethical for any person to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a gratuity, rebate, loan, offer of employment or other services or property of value in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia’s Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to customers

in the ordinary course of business for the purchase of goods and services are acceptable and are the property of the City.

- 24.2 KICKBACK AND REBATES. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor to this Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor or order.

* * * * * END OF GENERAL CONDITIONS * * * * *